Bills of Sale Ordinance. In a genuine hire-purchase transaction there is no question of the owner of a chattel advancing money to its hirer. When money passes from the owner of the chattel to the hirer, no matter under what guise, the transaction is clearly a money-lending transaction. In my view the repayment of the amount due under the first hire-purchase agreement and the purchase of the car by the plaintiffs from the defendant on the 9th March 1960 was fictitious. All that happened on that day was that the defendant raised a loan of $2,952 on the security of the car in which he had an interest.

In my view the plaintiffs remain the owners of the car under the first hire-purchase agreement. There is no question of the Bills of Sale Ordinance being applicable to the facts of the first hire-purchase agreement. It was a genuine hire-purchase agreement in that the plaintiffs bought a new Holden car from the Singapore agents Messrs. Progress Motors Ltd. and hired it to the defendant on hire-purchase terms. For these reasons I hold that the car is the property of the plaintiffs. There shall be a declaration that the plaintiffs are the owners of the Holden Diesel Saloon car registered No. SH. 4382, Engine No. 7004178, Chassis No. FC. 8632P and 1 order that the defendant deliver to the plaintiffs all documents of title relating to the said car. The defendant's counterclaim is dismissed.

Judgment for the plaintiff.
Counterclaim dismissed.

Solicitors: *Hilborne, Chung & Co.*; *A. J. Braga.*

HAJI JUNUS v. CHIK & ANOR.

[O.C.J. (Suffian J.) September 21, 1963]

[Alor Star — Civil Suit No. 106 of 1957]

Land Laws — Fraud — Kedah Land Enactment No. 55 s. 43.

S, now deceased, was the registered proprietor of the land in dispute. After his death his widow, the 2nd defendant, sold half of the land to the plaintiff, received the full purchase price and let him into possession and agreed to transfer the half share to him after she had extracted letters of administration to the estate of the deceased. As she failed to do so the plaintiff sued her and the court ordered specific performance against her. After obtaining the judgment the plaintiff discovered that the land had on February 8, 1956 been registered in the 1st defendant's name. It was established as a fact that before February 8, 1956 the land was vested in the 2nd defendant, and two other persons to the extent of 34/48 shares and 7/48 shares each respectively and that the 1st defendant knew that half of it had been sold to the plaintiff. Nevertheless the 1st defendant bought a half share for $100 — the consideration expressed in the memorandum of transfer being untrue — and obtained a transfer of the whole property to himself on the understanding that he would transfer a half share to the plaintiff. The plaintiff now sought a declaration that he was entitled to half share in the land and that the first defendant be compelled to transfer that half share to the plaintiff.

Held: (1) the 1st defendant was guilty of fraud as he knew of the plaintiff's interest in the land and he succeeded in persuading the original owners to transfer the whole land to himself only because he had promised them that he would transfer a half share to the plaintiff;

(2) the 1st defendant, being party to a fraud and not being a *bona fide* purchaser for value, should not be allowed to keep the half share.

[**Editorial Note:** for the ruling on preliminary objections in this suit see [1963] M.L.J. 303.]

Cases cited in argument.

(1) *Gibbs* v. *Messer McIntyres & Creswell* [1891] A.C. 248.

(2) *Assets Co. Ltd.* v. *Mere Roihi & Ors.* [1905] A.C. 176.

(3) *Waimiha Sawmilling Co. Ltd.* v. *Waione Timber* Co. Ltd. [1926] A.C. 101.

(4) *Tueh Guat Choo* v. *Cheah Ah Hoe & Anor.* [1931 - 32] F.M.S.L.R. 317.

(5) *Bagher Singh* v. *Chanan Singh* [1961] M.L.J. 328.

(6) *Muruan etc.* v. *Jabol* [1962] M.L.J. 319.

CIVIL SUIT.

G. H. Goh for the plaintiff.

A. Jayadeva for the 1st defendant.

Cur. Adv. Vult.

Suffian J.: In this suit the question is whether or not Chik the first defendant's conduct amounts to "fraud" within the meaning of section 43 of the Kedah Land Code.

The facts as I find them are as follows.

Senawi, now deceased, was the registered proprietor of the land in dispute. After his death, his widow Mariam (the second defendant) sold half of the land to Haji Junus the plaintiff. Mariam received the full purchase price, let the plaintiff into possession (he has been in possession ever since) and agreed to transfer the half share to the plaintiff after she had extracted letters of administration to Senawi's estate.

She never did so and in 1954 the plaintiff sued her in Civil Suit No. 113 of 1954 and in 1957 the court ordered specific performance against her. But to this day the half share has not been transferred to the plaintiff.

After obtaining the above judgment the plaintiff discovered that the land had in 1956 been registered in Chik's name.

What had happened was as follows. On February 8, 1956 i.e. before the judgment, Mariam was registered as the proprietor of the land to the extent of 34/48, Ramlah to the extent of 7/48 and Saadiah to the extent of 7/48 share. This was in accordance with an order of this court in Originating Summons No. 347 of 1951.

Reference to the court file shows that Mariam obtained this share partly as Senawi's beneficiary and partly by purchase from the *Baitulmal* while Ramlah and Saadiah obtained theirs as Senawi's beneficiaries.

On the same day, the three co-proprietors transferred the whole land to Chik.

So the plaintiff now brings this suit against both Chik, as the first defendant, and Mariam, as the second defendant. Since the filing of this second suit Chik has died and his widow Halimah has been appointed by the court as his legal representative.

In this suit the plaintiff alleges that when Chik bought the land he knew or ought to have known that a half share in it had been sold by Mariam more than 28 years previously, the transfer by Mariam and her two daughters to Chik was not a genuine transfer and Mariam and Chik had acted in collusion.

The position today is that Chik is the registered proprietor of the land in dispute. In form this suit is not for the rectification of the register but only for a declaration that the plaintiff is entitled to a half share in the land and that Chik be compelled to transfer that share to the plaintiff. But whether the substance or the form of the suit is regarded, it is obvious that it is for the plaintiff to establish his claim and his claim can only succeed under section 43 of the Land Code the relevant parts of which read —

"(1) The title of the proprietor....shall be indefeasible except as in this section provided.

(2) In the case of fraud or misrepresentation to which he is proved to be a party the title of such proprietor....shall not be indefeasible.

(3) xx xx xx

(4) Nothing in sub-section (2)....shall affect the title of a proprietor....who has taken *bona fide* for valuable consideration from any proprietor....whose registration as such was procured by [fraud or misrepresentation to which he is proved to be a party]...."

Mariam in her written statement of defence admits liability and consents to judgment but, as she did not appear at the trial (she is over 90 and can only crawl about in the house), Inche Jayadewa submits that her written defence be ignored altogether because any admission by her cannot be accepted against Chik. On the view I take of the facts in dispute it is unnecessary for me to have any regard to her written defence.

As to the disputed facts I find the following proved: that before he bought the land Chik knew that half of it had been sold to the plaintiff (PW2's evidence is enough to establish this), nevertheless he bought it but he only bought half of it paying Mariam $100, Ramlah and Saadiah $50 each ($5,000 the consideration expressed in the memorandum of transfer being untrue), and he prevailed upon the three women to transfer the whole land to him by saying that after the transfer he would transfer half to the plaintiff.

The irresistible inference to be drawn from the facts as I find them is that Mariam was not guilty of any fraud but Chik was. He knew of the plaintiff's interest in the land and he succeeded in persuading the three women to transfer the whole land to him (though he had bought only half) only because he had promised them that he would transfer the other half to the plaintiff. That he has not done. In these circumstances it is immaterial that the plaintiff then had no known existing right.

I am of the opinion that Chik, being party to a fraud and not being a *bona fide* purchaser for value, should not be allowed to keep the half share and accordingly I enter judgment for the plaintiff against both defendants as prayed with costs. The first defendant's counterclaim is dismissed.

Judgment for the plaintiff.

Solicitors: *G. H. Goh & Co.; Jayadeva & Zahir.*